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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,427	10/28/2003	Kurt-Reiner Geiss	7390-X03-020	4477

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EXAMINER

SPIVACK, PHYLLIS G

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/695,427	GEISS ET AL.	
	Examiner	Art Unit	
	Phyllis G. Spivack	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12-16-05</u> . | 6) <input type="checkbox"/> Other: _____ |

An Amendment filed December 16, 2005 is acknowledged. Claim 2 is canceled. Claims 1 and 3-7 remain under consideration.

An Information Disclosure Statement filed December 16, 2005 is further acknowledged and has been reviewed.

Claims 1 and 3-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The recitation "acceleration of a physiological recovery process of a user" is new matter. Although the specification mentions the term "physiological" in a context of measuring some processes and sequences of down-regulation after stress on pages 4 and 9, respectively, of the specification, the specification fails to describe "a physiological recovery process". Such a recovery process would reasonably be considered one, which is accordance with, or characteristic of, the normal functioning of a living organism. Such broad language is not supported by the specification and represents new matter in claim one. *In re Rasmussen*, 211 USPQ 323.

The objection to the Abstract that was set forth in the last Office Action is withdrawn following an amendment thereto.

Subsequent to the cancellation of claim 2, the objection to the disclosure is moot.

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In the first Office Action the claims were rejected under 35 U.S.C. 112, second paragraph, for failing to particularly pointing out and distinctly claiming the invention with respect to the recitation "for accelerating the person's regeneration from the stressing".

Following the deletion of the term "regeneration" from claim 1, this rejection is withdrawn.

Claims 1-7 were rejected in the last Office Action under 35 U.S.C. 102(a) as being anticipated by Fischer et al., EP 1 275 309. It was asserted Fischer teaches the oral administration of L-theanine in the form of a food, such as a drink, for stress relaxation.

Applicants urge Fischer teaches a food composition that causes stress relaxation to mammals, apparently only for a treatment of insomnia.

To the extent claim 1 is drawn to a "stress-relieving effect" (page 7, line 17 of the Response filed December 16, 2005) on animals, the rejection of record of claims 1 and 3-7 under 35 U.S.C. 102(a) is maintained. Insomnia is a type of "mental stressing". Fischer teaches the administration of the same active compound, at the claimed dosage, for acceleration of a recovery process from mental stress.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kanamichi et al., JP 09-012454 (abstract).

Kanamichi teaches the administration of theanine in a food product, obtained by allowing glutaminase to act on a mixture of glutamine with ethylamine, in dosages of 0.3-300 mg/kg body weight, to provide mental relaxation.

Claims 1, 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wataru et al., JP6100442.

Wataru teaches the administration of theanine in a food product, such as a soft drink, obtained as a glutamic acid derivative to mitigate stress from mental or physical diseases.

Ueda et al., U.S. Patent 6,831,103, is cited to show further the state of the art with respect to the administration of theanine to treat various types of physical and mental stress.

No claim is allowed.

Applicant's submission of an Information Disclosure Statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on December 16, 2005 prompted the new grounds of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this Final Action is set to expire THREE MONTHS from the mailing date of this Action. In the event a first reply is filed within TWO MONTHS of the mailing date of this Final Action and the Advisory Action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the Advisory Action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the Advisory Action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this Final Action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Phyllis G. Spivack whose telephone number is 571-272-0585. The Examiner can normally be reached from 10:30 to 7 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Christopher Low, can be reached 571-272-951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 7, 2006


Phyllis G. Spivack
PHYLLIS SPIVACK
PRIMARY EXAMINER
1614